

**STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION**

IN THE MATTER OF:

GULF COAST WESTERN LLC
CHARLES REED CAGLE
MATTHEW HARRIS FLEEGER
DANIEL LAMONTAGNE

RESPONDENTS

ADMINISTRATIVE ORDER
NO. OV-2010-0013

**ORDER TO VACATE
BASED UPON AGREEMENT AND UNDERSTANDING
SET FORTH IN NO-ACTION LETTER OP-2011-1347**

The Alabama Securities Commission ("Commission"), having authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, has determined as follows:

RESPONDENTS

1. **GULF COAST WESTERN, LLC ("GCW")** is a Texas Corporation having a commercial address of 12750 Merit Drive, Park Central VII, Suite 770, Dallas, Texas 75251. During all times significant to this Order, **GCW** was not registered in any capacity with the Commission.

2. **MATTHEW HARRIS FLEEGER ("FLEEGER")**, at all times relevant, acted as Co-Chief Executive Officer of GCW, with a business address of 12750 Merit Drive, Park Central VII, Suite 770, Dallas, Texas 75251. During all times applicable to this Order, **FLEEGER** was not registered in any capacity with the Commission.

3. **CHARLES REED CAGLE ("CAGLE")**, at all times relevant, acted as Co-

Chief Executive Officer of GCW, with a business address of 12750 Merit Drive, Park Central VII, Suite 770, Dallas, Texas 75251. During all times applicable to this Order, **CAGLE** was not registered in any capacity with the Commission. Legal counsel for **GCW** and **FLEEGER** has notified Commission staff that **CAGLE** resigned as an officer of **GCW** on July 22, 2011 and now serves as an independent consultant.

4. **DANIEL LAMONTAGNE ("LAMONTAGNE")**, at all times relevant, acted as Associate Vice President of GCW, with a business address of 12750 Merit Drive, Park Central VII, Suite 770, Dallas, Texas 75251. During all times applicable to this Order, **LAMONTAGNE** was not registered in any capacity with the Commission. Legal counsel for **GCW** and **FLEEGER** has notified Commission staff that **LAMONTAGNE** ceased employment with **GCW** and received unemployment benefits from **GCW**, which unemployment benefits have since expired.

STATEMENT OF FACTS

5. The Commission issued Administrative Order No. CD-2010-0013 dated March 3, 2010 naming the **RESPONDENTS** herein based upon the Commission's receipt of information and investigation which indicated that:

- a. On or about January 22, 2009, a representative of **GCW** engaged in the offer and sale of alleged unregistered securities, to wit: units of 'general partnership interests' [joint venture] in the VACHERIE II JOINT VENTURE, as identified on the front of the Confidential Information Memorandum ("CIM"), to an Alabama resident.
- b. **LAMONTAGNE** made a general solicitation ("cold call") to an Alabama resident. The following day offering documents, entitled Confidential Information Memorandum, were mailed by representatives of **GCW** to the same Alabama resident. The offering materials represented **CAGLE** and **FLEEGER** as the Co-Chief Executive Officers of **GCW**.

- c. The offering memorandum describes the investment offered to the Alabama resident as the participation in units of "general partnership interest" in a joint venture to be formed under Texas partnership law to engage primarily in the business of exploration, production from, and operation of an oil and gas well (the "prospect well") in St. James Parish, Louisiana. The investment objectives are stated to be to (1) acquire the prospect well acreage and participate in operations thereon to drill, test and, if appropriate, complete a well; (2) provide cash distributions from operations; and (3) in its initial year(s) of operation, provide current tax benefits to venturers to offset income from any source.
- d. Annex B of the same offering memorandum includes the following statement: "*. . . in a state administrative proceeding in Alabama, which essentially dismissed that state's claim that similar joint venture interests were securities,*" which the Commission alleged constituted a material misrepresentation and which the **RESPONDENTS** have disputed. The administrative proceeding referenced in the quote above, Administrative Order No. CD-2002-0018 involved respondents Heartland Energy, Inc., Charles Reed Cagle and Randy Kamps (the "2002 C&D") regarding certain oil and gas joint venture interests offered to Alabama residents. In that regard, there have been no administrative proceedings involving the **RESPONDENTS**, which resulted in a decision by the Commission that joint venture interests were not securities. The 2002 C&D was dismissed by the Commission in 2003 based upon affidavits from the three Alabama residents who invested in Heartland Energy, Inc. that such residents were full and active partners in the Heartland Energy entity and do not seek any relief or remedy available under the Alabama Securities Act, and further upon representations made by Heartland, Cagle and Kamps to the Commission that the joint venture interests were offered only to sophisticated and accredited investors, and that

such investors were fully informed and advised of their obligation to actively participate in the management of such joint venture. The Commission has never issued a decision that the joint venture interests are not securities. It continues to be the Commission's position that these joint venture interests constitute securities under the Alabama Securities Act ("Act").

- e. A review of the files of the Commission conducted on November 19, 2009, disclosed that **RESPONDENTS** were neither registered nor exempt from registration to offer and sell securities in Alabama.
- f. A review of the Commission's files, performed on November 19, 2009, disclosed no record of registration or any perfected exemption from registration for the securities, to wit: units of interest in the Vacherie II Joint Venture, offered to Alabama residents.
- g. Federal Express shipping documents received by the Commission disclosed that between the dates of October 2008 and April 2009, **RESPONDENTS** mailed approximately 100 or more parcels to Alabama residents, potentially representing numerous offers or sales of investment opportunities in oil and gas ventures.
- h. A further review of the Commission files disclosed that between the dates of October 2008 and April 2009, **CAGLE** was named in Administrative Cease and Desist Order 2007-0036, as well as respondents Heartland Energy Development Corp., John Schiffner and Brandon Davis (the "2007 C&D"), in a matter of similar oil and gas joint venture offers. Further, the GCW Offering Memorandum delivered to the Alabama resident failed to disclose the 2007 C&D, which the Commission alleges constituted an omission of material fact.

6. Based on the above information the Commission issued Administrative Order No. CD-2010-0013 on March 3, 2010 (the "2010 C&D").

7. An informal meeting, in regards to all **RESPONDENTS**, was held on July 13, 2010. Prior to, during, and subsequent to this meeting, **RESPONDENTS** provided the Commission staff with information regarding the solicitation referenced in the 2010 C&D, as well as how the joint ventures sponsored by GCW operate. This information included, but is not limited to, affidavits and certain material representations, which the Commission is relying upon in entering this Order.

8. **RESPONDENTS**, by and through their attorneys, have represented to the Commission staff that there are only five Alabama residents who are investors/joint venture participants in one or more of the joint ventures sponsored by GCW. They have provided affidavits to the Commission staff, which were signed by four of the five Alabama investors/participants in March 2010 and early April 2010. These affidavits state, in part, that the investor/participant has received notices of the joint venture meetings and have had the ability to participate in these meetings and further that the participants, by a majority vote, manage the joint venture and the joint venture participants had no complaints against GCW or the joint ventures. The Commission questions the ability of the joint venturers to manage or operate as a true general partnership, but has accepted the filing of the affidavits from four of the Alabama joint venturers.

9. Following the informal meeting, GCW and the Commission exchanged correspondence relating to the operations of the joint ventures sponsored by GCW, specifically those relating to the joint ventures in which there are Alabama participants. **RESPONDENTS**, by and through their attorneys, have represented that the five Alabama residents are investors/joint venturers in the following: Jones Ranch Multi-Well I, Jones Ranch Multi-Well II, Jones Ranch Multi-Well III, Vacherie II, Acreage, and Valentine.

10. **RESPONDENTS** have supplied the Commission staff with documentation indicating that **CAGLE** did not receive service of the 2007 C&D until sometime in 2008.

This 2007 C&D concerned a separate entity with respect to an offer of sale made in the state of Alabama. **CAGLE** disputed the Commission's allegation and, in November 2008, provided the Commission staff with an affidavit in regards to this 2007 C&D explaining that he never had ownership interest in Heartland Energy Development Corporation. Thereafter, the Commission vacated the 2007 C&D as to **CAGLE** only based on his affidavit that he had no ownership of, nor any part of, Heartland Energy Development Corporation, and therefore was not a proper party to be named therein.

11. **GCW and FLEEEGER**, in a no-action request letter to the Commission dated September 7, 2011 ("No-Action Request"), have represented and offered information to the Commission staff regarding future actions of **GCW** and **FLEEEGER** with respect to Alabama residents. The No-Action Request includes a commitment by **GCW and FLEEEGER** to describe accurately the disposition of any Alabama administrative proceedings. **GCW and FLEEEGER** understand their obligation to accurately disclose administrative matters related to state securities authorities. It also contemplates that **GCW** will provide additional information to the Commission as may be requested by the Commission staff.

12. **CAGLE**, in his letter to the Commission dated November 2, 2011, has represented to the Commission that should the Commission vacate the 2010 C&D as to **CAGLE**, neither he, in his individual capacity or any other capacity, nor any company in which he owns a controlling interest or serves as an executive officer will represent that such Order of Vacatur is a determination by the Commission that the joint venture interests in question were not securities. **CAGLE** further agreed to represent only what was specifically set forth in such order of vacatur or his letter to the Commission dated November 2, 2011.

13. Further, **GCW and FLEEEGER**, through the No-Action Request, have represented that joint venture interests will only be offered to Alabama residents that are accredited pursuant to SEC Regulation D, Rule 501 and will fully inform the investors/joint venturers of their obligations and potential liabilities as more fully set forth in No Action Letter No. 2011-1347.

14. In August, 2011, **GCW** made an offer to repurchase $\frac{1}{4}$ unit of interest that was offered and sold to one Alabama resident subsequent to the issuance of the 2010 C&D. The Alabama resident accepted the offer of repurchase, which included a 6% interest rate on the principal amount.

15. The Commission staff has conducted an investigation of the allegations as set forth in the 2010 C&D as it relates to the Alabama residents and is not herein making a determination that the joint venture interests are not securities.

WHEREAS, the Commission and **RESPONDENTS GCW, CAGLE, FLEEGER, and LAMONTAGNE** are desirous of settling this matter as hereafter set forth,

WHEREAS, the Commission has relied upon the representations, information, and documentation provided by **RESPONDENTS GCW, CAGLE, FLEEGER, and LAMONTAGNE**, and if these representations, information, or documentation proves to be untrue or deceptive, then the Commission may seek further remedies such as other administrative, civil or criminal remedies, which are available to it under the Act.

THEREFORE, the Cease and Desist Order, Administrative Order No CD-2010-0013 issued against **RESPONDENTS GCW and FLEEGER**, on March 3, 2010, shall hereby be vacated. All future activities of RESPONDENTS GCW and FLEEGER directed at Alabama residents shall be subject to compliance with the stipulations and conditions set forth in No Action Letter No. 2011-1347, a copy of which is attached hereto and incorporated by reference (the "No Action Letter"), should RESPONDENTS GCW and FLEEGER desire for the Commission to continue to take no further action against them.

THEREFORE, the Cease and Desist Order(Administrative Order No. CD-2010-0013) issued against **RESPONDENTS CAGLE and LAMONTAGNE** on March 3, 2010, shall hereby be vacated. All future activities of RESPONDENT CAGLE for or on behalf of RESPONDENT GCW with respect to Alabama residents shall be subject

to compliance with No Action Letter No. 2011-1347 should RESPONDENT CAGLE desire for the Commission to continue to take no further action against him. However, to the extent RESPONDENT CAGLE'S activities with respect to Alabama residents are not for or on behalf of RESPONDENT GCW, the No Action Letter shall not apply to him or to any entity with which he might be affiliated.

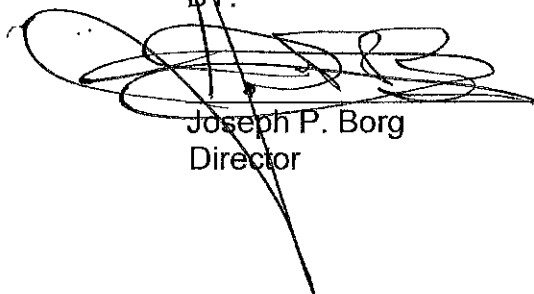
In regards to **LAMONTAGNE**, legal counsel for **GCW** and **FLEEGER** has notified Commission staff that **LAMONTAGNE** ceased employment with **GCW** and received unemployment benefits from **GCW**, which unemployment benefits have since expired.

The Commission may periodically review **RESPONDENT GCW's** records for compliance with the stipulations as set forth in the No Action Letter No. OP-2011-1347.

Entered at Montgomery, Alabama, this 14th day of November, 2011.

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BY:



Joseph P. Borg
Director

